



State Water Resources Control Board



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Gray Davis
Governor

August 1, 2000

In Reply Refer
To:340:EM:5645

To Enclosed Mailing List:

STATE WATER RESOURCES CONTROL BOARD DECISION 1635: OFFICIAL NOTICE OF SETTLEMENT AGREEMENT AND COURT OF APPEAL DECISION

The purpose of this letter is to respond to the joint request of El Dorado County Water Agency (EDCWA), El Dorado Irrigation District (EID), El Dorado County, and Amador County to augment the hearing record for State Water Resources Control Board (SWRCB) Decision 1635 (D-1635). The parties asked that the record be augmented to include a settlement agreement reached among the four parties on April 6, 1999, that prescribes a regime of water storage and releases for Silver Lake in Amador County. The parties also requested that any SWRCB order concerning the water rights of EDCWA or EID, including the pending order on the petitions for reconsideration of D-1635, be consistent with the terms of the agreement.

For the reasons discussed below, the SWRCB will take official notice of the settlement agreement for the limited purpose of recognizing that the agreement exists. The SWRCB does not plan to conduct additional hearings to receive evidence concerning the agreement or other issues.

By notice dated May 18, 2000, the SWRCB advised all parties to this proceeding of the joint request, and provided all parties with an opportunity to submit objections to the requested augmentation of the record. The SWRCB received a letter dated June 9, 2000, from the League to Save Sierra Lakes, et al. (the League). The League objected to including the settlement agreement in the administrative record unless the record is reopened for receipt of comments on the alleged deficiencies of the settlement agreement.

The SWRCB may take official notice of official acts, including a settlement agreement reached between public agencies. (Cal. Code Regs, tit. 23, § 648.2; Evid. Code, § 452, subd. (c).) The SWRCB will take official notice of the settlement agreement for the limited purpose of recognizing that the parties have reached agreement concerning the operation of Silver Lake on the terms set forth in the agreement. The SWRCB will not rely on the agreement as evidence of what operational requirements are appropriate for Silver Lake, without holding additional hearings. In light of the limited purposes for which the agreement is admitted into the record, it is unnecessary for the SWRCB to provide the League the opportunity to comment on alleged deficiencies in the agreement.

In its June 9, 2000 letter, the League also asked that the record be augmented to include the decision of the Court of Appeal in *County of Amador v. El Dorado County Water Agency, et al.* (1999) 76 Cal.App.4th 931. In addition, the League requested that additional hearings be held to allow the League to present testimony regarding the alleged invalidity of EDCWA's and EID's adoption of a 1999 water program. The water program includes EDCWA's and EID's petition for assignment of state filed Application 5645, which is the subject of D-1635. The League alleges, among other things, that the adoption of the 1999 water program was invalid under the California Environmental Quality Act (CEQA). Finally, the League requested a hearing in order to submit unspecified new information concerning EDCWA's and EID's proposal to divert from the South Fork American River. In *County of Amador, supra*, the Court invalidated the 1993 and 1995 EIRs prepared in support of EDCWA's and EID's water program. The League has filed a subsequent action challenging the adequacy of the 1999 revised EIR, which is currently pending in Sacramento County Superior Court.

In accordance with Evidence Code section 451, subdivision (a), the SWRCB will take official notice of the court's decision in *County of Amador, supra*, as requested by the League. The SWRCB's receipt of additional evidence or argument on the question of the adequacy of the 1999 EIR, however, would not be an efficient use of resources for the SWRCB or the parties to this proceeding. As the SWRCB has previously advised the parties, CEQA requires the SWRCB, as a responsible agency, to assume that the 1999 EIR is adequate notwithstanding a legal challenge. (Pub. Resources Code, § 21167.3, subdivision (b).) The League's request for additional hearings to present testimony and new information therefore is denied. Consistent with CEQA, the SWRCB will proceed with its reconsideration of D-1635, and will notify parties to the proceeding of any proposed action.

If you have any questions, please contact Ms. Dana Differding of the Office of Chief Counsel at (916) 657-2086, or Mr. Ernest Mona of the Division's Hearing Unit at (916) 657-1947.

Sincerely,

ORIGINAL SIGNED BY:

Authur G. Baggett, Jr.
Acting Chair

Enclosure

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Jim Canaday, ENV, DWR
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D:\em\D-1635 Ruling 2 7/12/00

MAILING LIST
SOUTH FORK AMERICAN RIVER
SWRCB DECISION D-1635 and ORDER WR 96-06
(updated July 10, 2000)

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